

STATE OF MAINE
WORKERS' COMPENSATION BOARD
27 STATE HOUSE STATION
AUGUSTA, ME 04333-0027

APPLICATION FOR PREDETERMINATION OF CONSTRUCTION SUBCONTRACTOR
TO ESTABLISH A REBUTTABLE PRESUMPTION

NOTICE

- The predetermination process is voluntary under the Maine Workers' Compensation Act.
- By submitting this Application you are not relinquishing your rights to be covered under the Maine Workers Compensation Law—if you are injured you may still file a claim with the Board.
- You also may have other rights as an employee under Maine law.
- Approved predeterminations are “portable” (may be submitted to any hiring agent) and are valid for one year from the date of approval.

Pursuant to 39-A M.R.S.A. § 105-A, _____ (Applicant Name) hereby requests a predetermination by the Maine Workers' Compensation Board that the Applicant is a construction subcontractor per 39-A M.R.S.A. § 105-A(1)(B).

APPLICANT

Name:	
D/B/A (if applicable):	
Physical address:	
Mailing address:	
Telephone:	E-mail address:
NAICS* code (your six digit code):	<u>Type of construction work you do:</u>

*To look up an NAICS Code – go to: <http://www.naics.com/search.htm>

Note: Information provided on this form, not otherwise confidential, may be shared with other state and federal agencies.

The State of Maine does not discriminate on the basis of disability in admission to, access to, or operation of its programs or activities. This material can be made available in alternate formats by contacting the Workers' Compensation Board ADA Coordinator.

IMPORTANT: PLEASE READ BEFORE COMPLETING APPLICATION

Notice to applicant: Predetermination of construction subcontractor independent contractor status is based upon the information provided in this application. Participation in the submission of a fraudulent or intentionally misleading form can result in fines of up to \$1,000 for an individual and up to \$10,000 for a corporation, partnership or other legal entity.

A “construction subcontractor” is defined as a person who performs construction work on a construction site for a hiring agent if the person satisfies all of the following criteria:

- (1) The person possesses or has applied for a federal employer identification number or social security number or has agreed in writing to carry out the responsibilities imposed on employers under this chapter;
- (2) The person has control and discretion over the means and manner of performance of the construction work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the hiring agent;
- (3) The person has control over the time when the work is performed and the time of performance is not dictated by the hiring agent. Nothing in this paragraph prohibits the hiring agent from reaching an agreement with the person as to a completion schedule, range of work hours and maximum number of work hours to be provided by the person;
- (4) The person hires and pays the person's assistants, if any, and, to the extent such assistants are employees, supervises the details of the assistants' work;
- (5) The person purports to be in business for that person's self;
- (6) The person has continuing or recurring construction business liabilities or obligations;
- (7) The success or failure of the person's construction business depends on the relationship of business receipts to expenditures;
- (8) The person receives compensation for construction work or services performed and remuneration is not determined unilaterally by the hiring agent;
- (9) The person is responsible in the first instance for the main expenses related to the service or construction work performed; however, nothing in this paragraph prohibits the hiring agent from providing the supplies or materials necessary to perform the work;
- (10) The person is responsible for satisfactory completion of the work and may be held contractually responsible for failure to complete the work;
- (11) The person supplies the principal tools and instruments used in the work, except that the hiring agent may furnish tools or instruments that are unique to the hiring agent's special requirements or are located on the hiring agent's premises; and
- (12) The person is not required to work exclusively for the hiring agent.

A “hiring agent” is defined as a person that hires or contracts with a person to perform construction work, but excludes an owner or occupant of real property who hires a person or persons to perform construction work on that real property.

AN APPLICATION IS NOT COMPLETE UNLESS YOU ANSWER ALL OF THE FOLLOWING QUESTIONS, PROVIDE ALL REQUIRED INFORMATION, AND SIGNATURES. INCOMPLETE APPLICATIONS MAY BE DENIED.

Before completing the rest of the form, please answer the following question:

Do you own and operate, or lease and operate, an item of equipment that weighs more than 7,000 pounds or has a gross vehicle weight rating greater than 7,000 pounds, and have you been hired to operate this equipment on the construction site or to transport materials to or from the construction site?

_____ YES _____ NO

If **YES**, please attach a copy of the equipment registration or other official document that includes the vehicle weight. Skip the remaining questions – sign and date final page of the application.

NOTE: This question applies ONLY if the equipment is being used as the sole purpose of your job. It does NOT apply to those who operate the equipment but also perform other types of construction work, such as carpentry, electrical, plumbing, etc. If you perform any type of construction work other than operating the equipment, you must answer NO to this question and complete the rest of the application.

(1) Do you possess a Social Security Number or Federal Employer Identification Number? ____Yes ____No

If **YES**, please indicate your Social Security number or Federal Employer Identification number in the space provided below, and then skip to question (2):

SSN/FEIN: _____

If **NO**, please either:

- Attach evidence that you have applied for a Social Security Number or Federal Employer Identification Number; or
- Sign the following statement:

I have read and agree to carry out all of the responsibilities imposed on employers by the Workers' Compensation Act, Title 39-A M.R.S. § 101, et seq.

Dated at _____, Maine this _____ day of _____, 20____.
(City/Town) (Month)

(Signature of Applicant)

(2) Do you have control and discretion over construction work that you perform (in other words, is the result of your work, rather than the means or manner by which your work is performed, the primary element bargained for by the hiring agent)? ____Yes ____No

(3) Do you decide when work will be performed (in other words, when to arrive at work and when to leave work)? ____Yes ____No

(Note: The hiring agent is not prohibited from reaching an agreement with the applicant as to a completion schedule, range of work hours and maximum number of work hours to be provided by the applicant.)

(4) Will you use assistants to perform construction? ____Yes ____No

If YES, are they employees? ____ Yes ____ No

(Note: If your assistants are not construction subcontractors they will be considered your employees and you will be required to provide workers' compensation coverage under Maine law.)

(5) Are you in business for yourself? ____Yes ____No

(6) Do you have continuing or recurring construction business liabilities or obligations? ____Yes ____No

(7) Does the relationship of business receipts to expenditures dictate the success or failure of your construction business? ____Yes ____No

(8) Do you receive compensation for construction work or services performed? ____Yes ____No

Is your pay determined unilaterally by any one hiring agent? ____Yes ____No

(9) Are you responsible in the first instance for the main expenses related to providing service or construction work performed? ____Yes ____No

(Note: Nothing in this paragraph prohibits the hiring agent from providing the supplies or materials necessary to perform construction work.)

(10) Are you responsible for satisfactory completion of construction work and are you held responsible for failure to complete construction work? ____Yes ____No

(11) Do you supply the principal tools and instruments used in construction work? ____Yes ____No

(Note: The hiring agent may furnish tools or instruments that are unique to the hiring agent's special requirements or are located on the hiring agent's premises.)

(12) Are you required to work exclusively for any one hiring agent? ____Yes ____No

APPLICANT

Read carefully and sign below:

I hereby certify that the foregoing information is truthful and accurate. I understand that should any information contained in this application be found to be intentionally misleading or fraudulent, the predetermination of independent contractor status shall be nullified and I may be subject to fines and/or criminal imprisonment as described above.

I further understand that this predetermination of independent contractor status is based upon the circumstances described in this application. I understand that changes in these circumstances may nullify the predetermination of independent contractor status. I agree to notify the Workers' Compensation Board of any subsequent changes to the information in this application or the circumstances described herein.

Date

Signature of applicant